of nuclear weapons, and not the deterrence of war. The chance that the powers might be willing to outlaw nuclear weapons is at present very small indeed. One might even say that the discussion about the progressive development of the humanitarian law of warfare at the ICRC diplomatic and experts conferences (especially with respect to indiscriminate weapons) is hampered by the fear that a specific wording might be applied to nuclear weapons. It is suggested, however, that after some time the climate will change. The SALT agreements will later be recognized as the turning point with respect to the evaluation of nuclear weapons.

Because of the political and military importance of nuclear weapons, it was often said that nuclear weapons should not be discussed in the context of the law of war, but in the CCD. The thesis here, however, is that a general prohibition of the use of nuclear weapons would enhance the chances for gradual disarmament in the nuclear field. If it is generally recognized that the function of nuclear weapons is limited to the deterrence of the use of nuclear weapons – one application of the philosophy of defensive deterrence – it may be expected that endeavours to eliminate the nuclear overkill would be more successful. The prohibition of the use of nuclear weapons may be the precondition for successful nuclear arms control and disarmament.

Chemical weapons

In the 1969 Report of the UN Secretary-General on chemical and biological weapons, "chemical agents of warfare are taken to be chemical substances, whether gaseous, liquid, or solid, which might be employed because of their direct toxic effects on man, animals and plants"; and bacteriological (biological) agents of warfare are living organisms, whatever their nature, or infective material derived from them, which are intended to cause disease or death of man, animals or plants, and which depend for their effects on their ability to multiply in the person, animal or plant attacked" (UN, 1969).

Further characteristics and effects of chemical and biological weapons will not be discussed here, but reference is made to the six-volume SIPRI study *The Problem of Chemical and Biological Warfare* (SIPRI, 1971*a–c*, 1973, 1974*a*, 1975*a*). The question to be dealt with here is the present legal position of these weapons.

In Article 23*a* of the 1907 Hague Regulations respecting the laws and customs of war on land, it is especially forbidden "to employ poison or poisoned weapons". This special prohibition expressed the general feeling that poison should be excluded as a means of warfare. The use of gas in World War I was widely criticized as violating the laws of war. Article 171 of the Treaty of Versailles treated the prohibition of gas warfare as generally understood: "the use of asphyxiating, poisonous or other gases and all analogous liquids, materials or devices being prohibited, their manufacture and importation are strictly forbidden in Germany". The provision also appears in the other peace treaties of

1919–20.[6] These provisions are evidence of the general official ur at that time that chemical warfare was forbidden. An explicit pro foreseen in the Treaty of Washington of 6 February 1922, of wh reads:

> The use in war of asphyxiating, poisonous or other gases, and all analogou terials or devices, having been justly condemned by the general opinion o world and a prohibition of such use having been declared in treaties to wh of the civilized Powers are parties,
>
> The Signatory Powers, to the end that this prohibition shall be univer as a part of international law binding alike the conscience and practice o clare their assent to such prohibition, agree to be bound thereby as betwe and invite all other civilized nations to adhere thereto.

This treaty was concluded between the USA, the UK, France, Ital although it never entered into force because it was not ratified b reasons not related to chemical weapons.

On 7 February 1923, the Convention on the Limitation of A Central American States was signed in Washington. Article 5 of tion states:

> The Contracting Parties consider that the use in warfare of asphyxiating g or similar substances as well as analogous liquids, materials or devices, humanitarian principles and to international law, and obligate them present Convention not to use said substances in time of war.

The 1925 Geneva Protocol reads:

> Whereas the use in war of asphyxiating, poisonous or other gases, and o liquids, materials or devices, has been justly condemned by the general civilised world; and
>
> Whereas the prohibition of such use has been declared in Treaties to jority of Powers of the world are Parties; and
>
> To the end that this prohibition shall be universally accepted as a part o Law, binding alike the conscience and the practice of nations;
>
> The undersigned Plenipotentiaries declare:
>
> That the High Contracting Parties, so far as they are not already Par prohibiting such use, accept this prohibition, agree to extend this prohibi of bacteriological methods of warfare and agree to be bound as between cording to the terms of this declaration.
>
> The High Contracting Parties will exert every effort to induce other S to the present Protocol.[7]

At the time of the League of Nations, CB warfare was consider of international law. In 1938 the Assembly adopted a resolution a "the use of chemical or bacteriological methods in the conduct

[6] Article 135, Treaty of Saint Germain; Article 82, Treaty of Neuilly; Article 11 non; and Article 176, Treaty of Sèvres.

[7] For the list of signatures and ratifications, see SIPRI (1975, pp. 532 ff.). The total parties to the Geneva Protocol, as of 31 December 1974, was 93. The USA beca April 1975.

terpreted as the prohibition also in cases of legitimate defensive military action.

Resolutions of the General Assembly are recommendations, and the rules they embody have no binding power. Those rules, however, are significant from the legal point of view. They are "weak norms": more than nothing, but less than law. They indicate the national auto-interpretation of the law of nations. They express the legal aspirations of the great majority of the world community; they are the basis for the *opinio juris* on which further action of states rests; and they indicate in what direction international law will develop.

A powerful minority maintains that the use of nuclear weapons is not prohibited by law. For example, Article 613 of the US Law of Naval Warfare states that "there is at present no rule of international law expressly prohibiting states from the use of nuclear weapons in warfare. In the absence of express prohibitions, the use of such weapons against enemy combatants and other military objectives is permitted." A similar opinion is expressed in paragraph 35 of the US Army's Rules of Land Warfare.[4]

From the Treaty of Tlatelolco on the non-nuclearization of Latin America, it follows that the parties considered the use of nuclear weapons legal as long as this use had not been prohibited by specific rules. In Article 3, Additional Protocol II to this treaty, nuclear-weapon states undertook not to use nuclear weapons against non-nuclearized states parties to the treaty. Such a special prohibition indicates that, without it, no prohibition exists; otherwise the Protocol would have been superfluous.

In conclusion, the time has come to outlaw the use of nuclear weapons. They violate the traditional principles of international law, and they threaten the integer existence of the human environment and of humanity itself. These survival and environmental aspects have up till now not been expressly recognized in international law. There was no need for it. But with the development of weapons of mass destruction, this aspect of nuclear weapons should play a role, together with that of their inhumanness, their indiscriminate effects and their repulsiveness. The demands of the public conscience follow the rational arguments based on self-preservation. Security for mankind in general would be enhanced by a general prohibition of the use of nuclear weapons. Such a prohibition – with its consequences for strategic philosophy and weapon posture – would facilitate the endeavours to reach arms control and disarmament in this field.

The possession of nuclear weapons is forbidden in some countries, based on peace treaties concluded after World War II, where the victor compelled the vanquished to abdicate the possession of specific kinds of weapon. The peace treaties with Hungary, Bulgaria, Romania and Finland (1947) contain a prohibition of the possession of atomic, biological and chemical weapons. The same

[4] See also the US Field Manuals concerning nuclear weapons, such as FM 101-31-1 *Staff Officer's Field Manual: Nuclear Weapons Employment Doctrine and Procedures;* and FM 100-30 *(Test) Tactical Nuclear Operations* (August 1971).

provision applied also to Italy, but this provision was annulled by 1951. In the Paris Agreements of 1954, the Federal Republic of cepted the obligation not to produce nuclear weapons on its territ III, Part 1, Article 1).[5] The Österreichische Staatsvertrag also cont bition on the production or possession of "ABC weapons", or on with them. These prohibitions rest on "victor law", characterize quality of the provisions, and not on "disarmament law", which takes equality as the guiding principle. Sometimes, however, a inequality is recognized, even in disarmament law, as in the 19 liferation Treaty according to which non-nuclear-weapon states nots", become legally "have-nevers". This inequality of treatm justification in the belief expressed in the preamble to the treat proliferation of nuclear weapons would seriously enhance the d clear war". The parties to the 1967 Treaty of Tlatelolco have un refrain from engaging in, encouraging or authorizing, directly or in any way participating in the testing, use, manufacture, produc sion or control of any nuclear weapon" (Article 1:2).

Other treaties prohibiting nuclear weapons in specific areas – general prohibition with respect to all states – are the 1971 Treat hibition of the emplacement of nuclear weapons and other weap destruction on the sea-bed and the ocean floor and the subsoil the Treaty), and the 1967 Outer Space Treaty, forbidding the pla around the earth of any objects carrying nuclear weapons or any of weapons of mass destruction, the installation of such weapon bodies or the stationing of them in outer space in any other man tion, the 1961 Antarctic Treaty aimed at the non-militarization of region ("Antarctica shall be used for peaceful purposes only"), w non-nuclearization.

The reasons given for the partial prohibitions in disarmament la be strong reasons for the permanent prohibition of nuclear weapo reprisal to the use of nuclear weapons *(jus in bello).* As is discussed a general prohibition was opposed because the threat of the us weapons was considered indispensable for the maintenance of pe the "balance of terror" or, at least, the prospect for both parties o unacceptable damage and devastation. It was argued, however, t function of nuclear weapons had gradually become the deterren

[5] One may wonder why this prohibition was restricted to German territory. The pu clear by the secret agreement, concluded in 1957 between the defence ministers of Delmas), Italy (Taviani) and FR Germany (F.J. Strauss), to cooperate in the produ weapons (see the article of former Italian ambassador to France, Pietro Quaroni (1 The plans came to naught with the presidency of de Gaulle. As Quaroni puts it: " *gestes du général de Gaulle en arrivant au pouvoir fut de laisser tomber cet accord. bruit à l'époque, car cet accord avait été gardé très secret, mais ceci ne diminue pa nouvel échec."* (*ibid.*, p. 73.)

ldditional Protocols

iplomatic Conference deals not only with international armed
ırs (Protocol I) – but also with armed conflicts not of an interna-
er – civil wars (Protocol II). In both cases, but particularly in the
ars, an assymetry might exist between the belligerents. It is true
erence was called upon to deal with new weapon developments
logically highly developed countries. The prohibition of specific
nethods of combat, especially provisions which would prohibit
ons unless certain conditions were fulfilled, might favour the rich
gically competent parties and rob the poor countries of their weap-
ference must keep in mind that no convention with a discrimi-
, favouring the states which can afford to spend enormous
noney on weapons, would be acceptable to the majority of (poor)
ap that exists between the rich and the poor, the technologically
d technologically undeveloped countries should not be further
y legal provisions. On the other hand, the proposals purporting to
power by legal prohibitions aimed especially at the powerful – for
suggestion that "the use of military air power by a party in the
possesses complete air superiority" should be forbidden (see Re-
ecretary-General, para. 109) – would have little chance of being
purpose of the laws of war is not that of equalizing the power
he parties.

ibitions of specific weapons, for example, the prohibition of the
ns of mass destruction, may incidently favour the poor, because
ns are generally only in the possession of technically highly de-
ntries. However, that is not the purpose of the prohibition, but
e-effect. The purpose is to prohibit weapons which violate recog-
les of the law of war.

s weapons

ubious weapons" is used to denote all the modern weapons made
echnology which may fall within categories forbidden by the laws
mous sums of money are spent yearly on weapon research. "Mil-
n and development – the improvement of existing weaponry and
nd development of new weapons – currently absorbs about $20 bil-
y and occupies the time of about 400 000 scientists and engineers
the world" (SIPRI, 1974*b*, p. 141).[2] The results of this enormous

in reaction to violent acts, and done with the purpose of deterring the continuation
ind of reprisal is different from the reprisal in wartime, which, according to tra-
itional law, is allowed in all cases where it is not expressly forbidden.

tes are based on material assembled in the SIPRI publication *Resources Devoted to
ch and Development* (SIPRI, 1972*a*). The USA and the USSR dominate the world's
h efforts, with outlays estimated to account for around 85 per cent of the world total

allocation of resources are staggering; they make it almost impossible to imagine what war will be like if these new weapons are used. It should be noted that considerable effort is being spent on detection systems (needed, for example, for effective antisubmarine warfare) (SIPRI, 1974*d*) and on new delivery systems (MIRVs, MARVs, cruise missiles), up to the extent of an automated battlefield (SIPRI, 1974*b*, chaps. 9–11; SIPRI, 1975*b*, chaps. 11–13).

There are several categories of "dubious weapons": (*a*) nuclear weapons, (*b*) biological and chemical weapons, (*c*) geophysical weapons, (*d*) incendiary weapons, (*e*) small-calibre high-velocity weapons, (*f*) fragmentation weapons, and (*g*) delayed-action weapons (including booby traps). The sessions of the ICRC Diplomatic Conference do not deal with the first three categories. Here, a short analysis of the legal position of all seven categories will be given. The significance of the guiding principles of the laws of war will become more apparent if they are applied to both large and small means of warfare.

Nuclear weapons

The effects of nuclear weapons are described in the Report of the UN Secretary-General on the effects of possible use of nuclear weapons and on the security and economic implications for states of the acquisition and further development of these weapons (A/6858). The report contains the unanimous findings of a committee of experts nominated by the Secretary-General in pursuance of General Assembly Resolution 2162 A (XXI) of 5 December 1966.

These effects of nuclear weapons are well known: heat, blast and radiation (direct or through fallout). In specific cases it might be possible to avoid considerable side-effects from the destruction of the military target: for instance, if a mini-nuke explodes in anti-ballistic warfare, in outer space. But some radiation is inevitable in almost all circumstances, and in most cases the effects of fallout may be felt far away from the explosion. In general, nuclear weapons, through radiation effects, are not able to discriminate between soldiers and civilians, nor between belligerents and neutrals (and not even between the present and future generations). The fate of human beings not killed by the heat or the blast, but exposed to radiation, is horrible – a slow and painful process often leading to death. Official estimates about the effects of the two bombs dropped on the Japanese cities are that 70 000 were killed and 84 000 injured in Hiroshima, and that 27 000 were killed and 41 000 injured in Nagasaki. However, even higher estimates of the casualties are given.

Insufficient time has passed since these two nuclear disasters to determine what genetic changes, if any, were induced in the survivors. All that need be noted here is that radiation from nuclear explosions can cause genetic mutations and chromosomal anomalies which may lead to serious physical and mental disabilities in future generations.

The Secretary-General's report concludes that the effects of any all-out nuclear war observe no boundary lines. The hazards could not be confined to the

powers engaged in war. The opposing forces would have to suffer both the kind of immediate destruction and the more enduring lethal effects of fallout that have already been described; but neighbouring countries, and even countries that are remote from the actual conflict, could soon become exposed to the hazards of airborne radioactive fallout precipitated at great distances from the explosion. Thus, at least within the same hemisphere, populations might suffer, through the ingestion of contaminated foods and the external irradiation due to fallout particles deposited on the ground. The extent and nature of the hazard would depend upon the numbers and types of bomb exploded. Given a sufficient number, no part of the world would escape exposure to biologically significant levels of radiation. To a greater or lesser degree, a legacy of genetic damage could be inherited by the world's population.

It is self-evident that nuclear weapons are in conflict with the principles based on the respect for civilian life and property. They have indiscriminating effects *per se,* and are inhumane, cruel and repulsive weapons. The devastation and destruction is such that in a real nuclear war, the suffering is disproportionate to the military gains,[3] because survival of the peoples involved is at stake, and the integer existence of mankind might be put in jeopardy. Nuclear explosions in the open may cause severe and perhaps irreversible damage of the environment, for example, to the ozone layer. Measured against the "necessities of war", no reasonable person would deny that in this case the values of survival and of humanity should prevail over the "demands of war".

But the main argument against the outlawing of the use of nuclear weapons is based on the "demands of peace": that nuclear weapons and the threat to use them are necessary to maintain the peace. This argument, too, is unconvincing, as thermonuclear weapons would not be used in case of a conventional war. The main function of those strategic weapons is, as we saw, no longer the deterrence of war, but the deterrence of the use of strategic nuclear weapons. This has become clear since the SALT agreements consolidated "mutual assured destruction".

The same reasoning should be applied to tactical nuclear weapons, especially in the European theatre. The use of these weapons might cause the total destruction of Europe. The only "reasonable" function of tactical nuclear weapons – as long as they exist – is to deter their use. The threat of the "first use" of tactical nuclear weapons has become incredible, since it means the beginning of a nuclear war which might end in the destruction of Europe.

This does not mean that nuclear weapons have no war-deterrent effect at all. As long as nuclear weapons exist – one might even say, as long as the knowledge of them exists – there will be a possibility that they are used, out of hatred, despair or madness, that is, irrationally. Prohibition of the use, therefore, is only a factor which contributes to the forces mobilized against the use

[3] For the results of nuclear war in Europe, see von Weizsäcker (1971). In case of planned total nuclear attack by one of the great powers, the other has only the choice between suicide or surrender.

of nuclear weapons. A prohibition of the use of nuclear weapons ever have an impact on the weapon posture, and would have fluence on the present NATO philosophy of "flexible response" options", including the first use of nuclear weapons, are kept o

In this doctrine of flexible response, it is argued that the selecte tactical weapons – a signal of firmness of purpose – would stop ag would be indispensable for deterring the adversary. But the cha such a first use would open the gate for the further use of nucl and invite an escalating process which may end in disaster. The tween conventional and nuclear warfare would be crossed.

The conclusion to be drawn from the analysis of the present sit the only rational function of nuclear weapons between nuclear-w especially the great powers, is to prevent, by deterrence, the u weapons by the opponent. Nuclear weapons neutralize each ot means that the "demands of peace" are no obstacle for the proh use of nuclear weapons. On the contrary. As long as NATO a threaten each other with the first use of nuclear weapons (as th sent), mistrust and tension will build up. A military and politica that nuclear weapons will only be used as a reprisal in kind agai nuclear weapons by the other should find expression in an agre to use first nuclear weapons, or, better still, in a convention prohi of nuclear weapons, except as a reprisal in kind.

The opinion that the use of nuclear weapons should be forbi spread in the world, especially among the non-nuclear-weapon governments of nuclear-weapon states, or of states allied to them to a prohibition. The conflicting views of states on the legality of ons are probably most clearly demonstrated by the voting reco General Assembly on Resolution 1653 (XVI), adopted on 24 No The resolution declared amongst other things that "any state and thermo-nuclear weapons is to be considered as violating the United Nations, as acting contrary to the laws of humanity and a a crime against mankind and civilization". It was adopted by 55 abstentions.

Resolution 2936 (XXVII), adopted on 29 November 1972, (see indicate an increasing consensus among states on the prohibiti weapons. But it should not be overlooked that the prohibition of ons expressed in this resolution was linked with the obligation o states of the United Nations not to use force. In the discussion m confused the question of the prohibition of force (*jus ad bellum*) tion of the prohibition of the use of specific weapons in armed *bello).* This weakens the significance of the voting, because som though voting in favour of the resolution, may have had the op use of nuclear weapons is allowed in defence against armed att lution, however, mentions the "*permanent* prohibition", which

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Chapter 1. The principles of the law of war[1]

1. *Introduction*

The International Committee of the Red Cross (ICRC) Conference of Government Experts on weapons that may cause unnecessary suffering or have indiscriminate effects was held in Geneva in 1973. The report of this Conference (ICRC, 1973*a*) invited governments to take international action with the aim of restraining, or even prohibiting, the use of specific kinds of new weapons which may be inhumane or indiscriminate in their effects (for example, small-calibre high-velocity bullets, incendiary weapons and fragmentation weapons). The experts in fact advised the governments to implement the decision made at St Petersburg in 1868, by which they reserved to themselves the right, whenever it was clear that scientific developments were leading towards improvement in armaments, "to come to an understanding . . . in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity".

Before approaching the question of the contents of the present international law of armed combat, the relationship should be discussed between the prohibition of the use of force, as formulated in Article 2, paragraph 4 of the Charter of the United Nations, and the prohibition of the use of specific weapons.

In situations in which the use of force is forbidden, it follows that any use of any weapon is prohibited. But in cases in which the law of nations does not prohibit the use of armed force, as for example in the case of self-defence against an armed attack according to Article 51 of the UN Charter, not every weapon may be used and not all methods of combat are allowed. The right of the defender to adopt means of injuring the attacker is not unlimited. He would not be allowed, for example, to use biological weapons, because their use is prohibited in every case of armed combat.

The question arises as to whether every soldier who uses weapons in an illegal war, that is, in a war of aggression, is committing an act prohibited by international law, for which he could consequently be punished as a war criminal. Present international law does not hold the individual combatant responsible for such an act. The policy-makers who initiate and wage such a war of aggression commit the crime against peace. The combatant in such a war is not regarded as committing the crime against peace, according to the principles established in post-war trials. He is only responsible for acts in violation of the laws of war.

In his famous book *De jure belli ac pacis,* Hugo Grotius made a distinction

[1] For further reference to the legal sources, conventions, manuals, judgements and authors, see United Nations (1973).

aw of war – the rules of international law pertaining in times of
law of peace – the rules of international law pertaining in times
jus ad bellum, that is, the law which governs whether a state or
go to war, belongs to the law of peace. The *jus in bello,* the law
tes the relations of the parties when war has broken out. To this
long the provisions which prohibit specific weapons.
cy exists sometimes to confuse the prohibition of the use of force
) and the prohibition of the use of specific weapons *(jus in bello).*
s tendency not only in scholarly publications, but also in state-
by government representatives at the United Nations. It may ex-
ding of UN General Assembly Resolution 2936 (XXVII), adopted
ber 1972, in which the General Assembly declared the renuncia-
se or threat of force in all its forms and manifestations in inter-
ions, in accordance with the Charter of the United Nations, and
nt prohibition of the use of nuclear weapons.
2936 (XXVII) resulted from discussions in the General As-
ed on the initiative of the Soviet Union which had proposed as
ne agenda "the non-use of force in international relations and per-
ibition of the use of nuclear weapons". During the debate the So-
stated: "The essence of our proposal is that it provides for the re-
y States of any use of force to resolve international disputes, in-
use both of nuclear weapons and of such types of weapons as are
alled conventional." (UN document A/PV. 2040, 26–33)
sentatives of Bulgaria, Czechoslovakia, Hungary, Mongolia and
neral supported the idea that the question of the prohibition of the
ar weapons should be settled in conjunction with that of the pro-
e use of force in international relations. The representative of Yu-
ed that "Yugoslavia has always pleaded in favour of the non-use
lations between States and the prohibition of all weapons of mass
nuclear and thermonuclear in particular."
kind of argument was used by some opponents of General As-
lution 1653 (XVI), of 24 November 1961, in which any use of nu-
ns was declared to be a crime against mankind and civilization.
ed that the issue of nuclear weapons not be made a separate pro-
that all use of force, including nuclear weapons, should be pro-
e resolution, this being more in agreement with the UN Charter
gnizes the right of countries to act in self-defense, and conse-
s not exclude the use of nuclear weapons in self-defense". In the
he USA argued "that article 51 of the Charter in no way imposed
on the use of weapons in self-defense".
of reasoning is contrary to present international law, which stipu-
al prohibition of force in international relations, but which recog-
n special circumstances the use of force is legal, for example, the
ce used in self-defence against armed attack as long as the UN

Security Council has not taken the necessary measures (Article 51 of the UN Charter); the action by air, sea or land forces taken by the Security Council (Article 42); or the joint action mentioned in Article 106. In such instances of the justified use of force, the laws of war are applicable, and consequently, "the right of belligerents to adopt means of injuring the enemy is not unlimited" (Article 22 of the Hague Regulations Respecting the Laws and Customs of War on Land, Annex to Hague Convention No. IV of 1907). The laws of armed combat govern the question of which weapons and methods of warfare are allowed, and which are forbidden. Everyone using force of arms must observe the laws of war.[2]

In the post-World War II war crime trials, aggressive and defensive actions were evidently treated as subject to the same *jus in bello.* The International Military Tribunal in Nuremberg passed no sentence on Doenitz and Raeder for unrestricted submarine warfare when it became evident that the Allies were guilty of the same offence (IMT, Nuremberg, 1946, pp. 109, 112). The purpose of the 1925 Geneva Protocol is to prohibit chemical and biological weapons in every armed combat, offensive or defensive. The prohibition of special weapons is meaningless if it applies only to the illegal use of force, in which case the use of any weapon at all is prohibited. Only if this impartiality is adopted with respect to just and unjust wars does the recognition of the existence of "laws of war", *jus in bello,* become meaningful, since both parties habitually assume that the other is the aggressor.

The present law of war

Some doubts exist as to whether the traditional general principles of humanitarian law concerning warfare are still valid today. During and since World War II, these principles have in practice often been waived or ignored, so that the important question now is whether this *de facto* use of weapons contrary to the spirit of humanitarian law has not modified or annulled these principles. For example, if the present legal position is that civilians were considered legitimate military targets (as they were in the case of the German use of V-I and V-II weapons, the mass air-strikes on German and Japanese cities, and the atomic-bomb attacks on Hiroshima and Nagasaki) and still are according to the doctrine of deterrence, or of "coercive warfare", the problem of the use of "dubious" weapons is largely academic. If "coercive warfare" – attacking civilians in order to make the war so unbearable for them that their government is forced to capitulate – is legal, it makes little sense to criticize certain weapons because they are painful and cruel.

Three questions should be answered concerning the legality of the use in war of "dubious" weapons.

The first question is: *Are the traditional principles of the law of war still valid?* According to widespread opinion, many principles of the international law of

[2] See further on this subject Greenspan (1959, p. 9).

armed combat were invalidated during World War II. The question is whether this is true: whether fundamental principles were abolished by the practice of the belligerents. Existing rules and principles can be eliminated by constant contrary practice. During the post-war trials of war criminals, an appeal was regularly made by the accused to the legal principle of *tu quoque:* the defence that the opposing, and now accusing, party had been guilty of the same violations of the law.[3] The editor of the *Law Reports of Trials of War Criminals* (United Nations, 1949, p. 10) came to the conclusion that: "It would thus, in strict law, be no defence for an ex-enemy to plead that a certain practice had been departed from by one or more of the Allies themselves, unless such departure were great enough to constitute evidence of a change in usage." The question of whether existing principles of the law of warfare were abolished during World War II by such "a change in usage" is a grave problem. It is a question which makes an appeal not only to reason – it is not simply an intellectual problem for which a cool analysis should provide the solution – but also to conscience. The lawyer's answer to the question, as well as being an analysis of the existing legal status, is also a contribution to the legal position, for expert opinion is a supplementary means of determining rules of international law (Statute of the International Court of Justice, Article 38, para. 1*d*). The lawyer's finding on this question is both declaratory and, to some extent, constitutive.

In determining the validity of the traditional principles, the obvious conflict between the different elements which constitute the law – the conventions, the judgements, and the customs and practices – must be taken into account. Any analysis of these conflicting elements which concludes that the humanitarian values of earlier times are no longer valid, is a factor in creating new law (and thus in contributing to invalidate old law).

Does the opinion of the experts – the lawyers – strengthen or undermine the bulwark erected against violence in the name of civilization and humanity? As a lawyer, the expert's natural tendency will be to uphold the laws of humanity against the demands of military necessity or political expediency. But as a scholar, he must carefully, and in good faith, evaluate all the evidence, both *pro* and *con*. Moreover, his opinion can have lasting influence only if he has taken all relevant social factors into account in an attempt to arrive at a legal judgement of the situation.

The second question is: *Should the progressive development of the laws of war be based on the recognition and inclusion of new principles?* The traditional principles developed partly because a conflict existed between the demands of humanity and the necessities of war.

[3] This defence was taken although the prosecution had, in view of the Allied practice of bombing cities, abstained from indicting the Germans, accused for attacking the civilian population (London blitz, Coventry, Rotterdam, with V-I and V-II weapons). The Court did not write out punishments for unrestricted submarine warfare (although it declared this kind of warfare illegal), because the Allies had followed the same practice. See Judgment of the IMT (1946, p. 109).

These values (those of humanity *vs* military necessity) were we each other in point of significance, and as a result some weapons ited (small explosive bullets, dum-dum bullets, and chemical and ical weapons). Such prohibitions were the outcome of the applicat isting legal principles to specific weapons. Progressive developme of war can be restricted to the application of these existing laws o weapons, in a decision in which the demands of humanity are con in relation to military effectiveness. But another question shoul answered: Has the time come to recognize new principles of the l combat? Developments in military technology have resulted in where the use of existing weapons could bring about the end o even of the whole of mankind.

This new evaluation of modern weapons – that their use can en kind and its survival – has found expression in several treaties. In to the 1967 Treaty of Tlatelolco it is stated "that nuclear weapon rible effects are suffered, indiscriminately and inexorably, by m and civilian population alike, constitute, through the persistence o tivity they release, an attack on the integrity of the human spec mately may even render the whole earth uninhabitable". The Pre 1968 Non-Proliferation Treaty mentions "the devastation that wo ed upon all mankind by a nuclear war". The 1971 Agreement on Reduce the Risk of Outbreak of Nuclear War between the USA a takes into account "the devastating consequences that nuclear wa for all mankind".

Does the fact that modern warfare threatens the survival of the or the survival of peoples, necessitate the adoption of new princip of war? In traditional international law, the humanitarian aspect weapon may lead to its prohibition. The modern international la might include the survival aspect as a factor which may lead to th of the use of a specific weapon.

The same reasoning applies with respect to the environment. N nology has created the possibility of destroying the environmen population lives, and this destruction could be almost irreversib thus not be reasonable to include the danger for the environment ance of the ecological balance) as a factor which should lead to th of a specific weapon or to the prohibition of a specific use of a weap of warfare)? The new awareness of danger that weapons may hav logical balance is evidenced in resolutions of the General Assemb draft treaty proposed by the USA and the USSR for the prohibition warfare.[4]

[4] UN General Assembly Resolution 3246 (XXIX), 9 December 1974: "Prohibitio fluence the environment and climate for military and other purposes incompatibl tenance of international security, human well-being and health". According to th tion on the Prohibition of Military or any other Hostile Use of Environmental Mo

at were invalidated during World War II. The question is whether whether fundamental principles were abolished by the practice of nts. Existing rules and principles can be eliminated by constant ctice. During the post-war trials of war criminals, an appeal was de by the accused to the legal principle of *tu quoque:* the defence osing, and now accusing, party had been guilty of the same violaw.[3] The editor of the *Law Reports of Trials of War Criminals* ons, 1949, p. 10) came to the conclusion that: "It would thus, in no defence for an ex-enemy to plead that a certain practice had d from by one or more of the Allies themselves, unless such de- great enough to constitute evidence of a change in usage." The whether existing principles of the law of warfare were abolished d War II by such "a change in usage" is a grave problem. It is a ich makes an appeal not only to reason – it is not simply an inblem for which a cool analysis should provide the solution – but cience. The lawyer's answer to the question, as well as being an he existing legal status, is also a contribution to the legal position, inion is a supplementary means of determining rules of internatatute of the International Court of Justice, Article 38, para. 1*d*). finding on this question is both declaratory and, to some extent,

ining the validity of the traditional principles, the obvious conflict different elements which constitute the law – the conventions, the and the customs and practices – must be taken into account. Any hese conflicting elements which concludes that the humanitarian lier times are no longer valid, is a factor in creating new law (and ributing to invalidate old law).

pinion of the experts – the lawyers – strengthen or undermine the ted against violence in the name of civilization and humanity? As expert's natural tendency will be to uphold the laws of humanity demands of military necessity or political expediency. But as a must carefully, and in good faith, evaluate all the evidence, both Moreover, his opinion can have lasting influence only if he has evant social factors into account in an attempt to arrive at a legal f the situation.

d question is: *Should the progressive development of the laws of war he recognition and inclusion of new principles?* The traditional prinped partly because a conflict existed between the demands of hu- the necessities of war.

was taken although the prosecution had, in view of the Allied practice of bombing from indicting the Germans, accused for attacking the civilian population (London Rotterdam, with V-I and V-II weapons). The Court did not write out punishments submarine warfare (although it declared this kind of warfare illegal), because the wed the same practice. See Judgment of the IMT (1946, p. 109).

These values (those of humanity *vs* military necessity) were weighed against each other in point of significance, and as a result some weapons were prohibited (small explosive bullets, dum-dum bullets, and chemical and bacteriological weapons). Such prohibitions were the outcome of the application of the existing legal principles to specific weapons. Progressive development of the laws of war can be restricted to the application of these existing laws of war to new weapons, in a decision in which the demands of humanity are considered anew in relation to military effectiveness. But another question should be put and answered: Has the time come to recognize new principles of the laws of armed combat? Developments in military technology have resulted in the situation where the use of existing weapons could bring about the end of civilization, even of the whole of mankind.

This new evaluation of modern weapons – that their use can endanger mankind and its survival – has found expression in several treaties. In the Preamble to the 1967 Treaty of Tlatelolco it is stated "that nuclear weapons, whose terrible effects are suffered, indiscriminately and inexorably, by military forces and civilian population alike, constitute, through the persistence of the radioactivity they release, an attack on the integrity of the human species and ultimately may even render the whole earth uninhabitable". The Preamble to the 1968 Non-Proliferation Treaty mentions "the devastation that would be visited upon all mankind by a nuclear war". The 1971 Agreement on Measures to Reduce the Risk of Outbreak of Nuclear War between the USA and the USSR takes into account "the devastating consequences that nuclear war would have for all mankind".

Does the fact that modern warfare threatens the survival of the human race, or the survival of peoples, necessitate the adoption of new principles of the law of war? In traditional international law, the humanitarian aspect of a specific weapon may lead to its prohibition. The modern international law of warfare might include the survival aspect as a factor which may lead to the prohibition of the use of a specific weapon.[4]

The same reasoning applies with respect to the environment. Modern technology has created the possibility of destroying the environment in which a population lives, and this destruction could be almost irreversible. Would it thus not be reasonable to include the danger for the environment (the disturbance of the ecological balance) as a factor which should lead to the prohibition of a specific weapon or to the prohibition of a specific use of a weapon (methods of warfare)? The new awareness of danger that weapons may have for the ecological balance is evidenced in resolutions of the General Assembly, and in the draft treaty proposed by the USA and the USSR for the prohibition of ecological warfare.[4]

[4] UN General Assembly Resolution 3246 (XXIX), 9 December 1974: "Prohibition of action to influence the environment and climate for military and other purposes incompatible with the maintenance of international security, human well-being and health". According to the Draft Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Tech-

In this respect – concerning the values of "survival" and of "environment" – the concept of the "threshold" is relevant. If recognized principles of the law of war are applied to certain modern weapons, such as nuclear weapons, there might be circumstances in which the use of such weapons would not violate these principles: one example might be the use of a small tactical nuclear weapon against a missile in outer space. Introducing nuclear weapons in this way would, however, mean crossing the "threshold" separating conventional from nuclear weapons. This crossing of the threshold would increase the probability – through escalation – of the use of other nuclear weapons and thus of general nuclear war and mutual destruction. Therefore, fear for the survival of humanity might be a factor leading to the total prohibition of a category of weapons whose use would otherwise not necessarily or in all circumstances be contrary to the principles of the laws of war. The same reasoning applies to consideration for the environment.

This threshold principle has already been applied to chemical weapons. The concept of a threshold separating conventional and chemical weapons has been a factor leading to the prohibition of all chemical weapons, including tear gases. The use of tear gases and other incapacitating chemical weapons, as such, might not be contrary to the laws of humanity. But they have been forbidden in the category of "all chemical weapons" for the reason that some use of gas might lead to general gas warfare.

Still another new development should be recognized. In the traditional law of warfare, the humanitarian aspects were evaluated against the "necessities of war". Today, however, thermonuclear weapons and certain deterrent strategies, such as the threat of counter-city attack as a second strike, are considered necessary for effective deterrence, that is, for "the maintenance of peace".

It therefore appears that a new conflict may have arisen: a conflict between the laws of humanity and the demands of peace. Must the principle that the civilian population is not a military target now be sacrificed because the threat to destroy cities – to commit a kind of genocide – can ensure the maintenance of peace?[5] Are some weapons, for instance thermonuclear weapons – notwithstanding their repulsive qualities – to continue to be recognized as legal weapons only because they are the indispensable instruments of the "balance of terror"?

Prohibition of certain new weapons

A third question should be considered: *Does the application of the principles of the laws of war* (the traditional principles, *casu quo* the adapted, modern principles) *to certain new types of weapons* – nuclear, chemical a geophysical and incendiary weapons, fragmentation weapons high-velocity bullets and delayed-action weapons – *lead to the all use of these weapons, or any specific use of these weapons, is il* pact of technological developments on all weapon systems is ev eral tendency is to incorporate into the military arsenals every tion to efficient weaponry. Governments and public opinion m to this creeping process of weapon sophistication.

If the use of modern weapons proves to violate the minimun humanity" as formulated in the laws of war, it should be officia Such a prohibition might have a specific significance. While there truth in the observation that the laws of war are often violated soon as such a violation serves military interests, the most imp of a prohibition of the use of specific weapons would be felt in ti it would influence military posture and even military strategy would not prevent a government from wanting to acquire the laws of war are not synonymous with laws of disarmament, a weapons may be desirable for the purpose of the mutual deterren – it would be difficult for a government to rely, for defence or f terrence, on a weapon whose use was prohibited by law.

In general, a legal prohibition on the use of a specific weapon m to the elimination of any possession of that weapon through measures, as was the case of the prohibition on the possession weapons in the 1972 Biological Weapons Convention, which wa a prohibition on the use of these weapons.

In the sections to follow, the question will be answered: Wha principles to be applied with respect to "dubious weapons"? The portant for the two ICRC Conferences at which the two Additi to the 1949 Geneva Conventions will be discussed (the Second Government Experts, February 1976, and the Third Session of t Conference, about two months later). But apart from that, it is reexamine the present state of the law of armed conflict. For it every government to evaluate independently modern weapons, mine whether they are to be considered forbidden weapons. This derlined in a new Article 34 of Protocol I adopted at the Second Diplomatic Conference:

niques, proposed to the Conference of the Committee on Disarmament (CCD) in August 1975, the parties undertake "not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as a means of destruction, damage or injury to another State Party".

[5] One aim of the SALT agreements was the maintenance of a mutual second-strike capability, considering that the limitation of anti-ballistic missiles "would lead to a decrease in the risk of outbreak of war involving nuclear weapons" (preamble to the ABM Treaty).

[6] Compare Shakespeare's *King Henry V* (Act III, scene 3), where King Henry cla less to keep his soldiers under control in and after battle:

"What rein can hold licentious wickedness
When down the hill he holds his fierce career?"

but to be able to enforce regulations in time of peace:

"Whiles yet my soldiers are in my command;
Whiles yet the cool and temperate wind of grace
O'erblows the filthy and contagious clouds
Of heady murder, spoil, and villany."

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ciples) *to certain new types of weapons* – nuclear, chemical and biological, geophysical and incendiary weapons, fragmentation weapons, small-calibre high-velocity bullets and delayed-action weapons – *lead to the conclusion that all use of these weapons, or any specific use of these weapons, is illegal?* The impact of technological developments on all weapon systems is evident: the general tendency is to incorporate into the military arsenals every new contribution to efficient weaponry. Governments and public opinion must be alerted to this creeping process of weapon sophistication.

If the use of modern weapons proves to violate the minimum "standard of humanity" as formulated in the laws of war, it should be officially prohibited. Such a prohibition might have a specific significance. While there may be some truth in the observation that the laws of war are often violated in combat as soon as such a violation serves military interests, the most important impact of a prohibition of the use of specific weapons would be felt in times of peace:[6] it would influence military posture and even military strategy. Although it would not prevent a government from wanting to acquire these weapons – laws of war are not synonymous with laws of disarmament, and forbidden weapons may be desirable for the purpose of the mutual deterrence of their use – it would be difficult for a government to rely, for defence or for general deterrence, on a weapon whose use was prohibited by law.

In general, a legal prohibition on the use of a specific weapon may contribute to the elimination of any possession of that weapon through disarmament measures, as was the case of the prohibition on the possession of biological weapons in the 1972 Biological Weapons Convention, which was preceded by a prohibition on the use of these weapons.

In the sections to follow, the question will be answered: What are the legal principles to be applied with respect to "dubious weapons"? The answer is important for the two ICRC Conferences at which the two Additional Protocols to the 1949 Geneva Conventions will be discussed (the Second Conference of Government Experts, February 1976, and the Third Session of the Diplomatic Conference, about two months later). But apart from that, it is important to reexamine the present state of the law of armed conflict. For it is the duty of every government to evaluate independently modern weapons, and to determine whether they are to be considered forbidden weapons. This duty was underlined in a new Article 34 of Protocol I adopted at the Second Session of the Diplomatic Conference:

[6] Compare Shakespeare's *King Henry V* (Act III, scene 3), where King Henry claimed to be powerless to keep his soldiers under control in and after battle:

"What rein can hold licentious wickedness
When down the hill he holds his fierce career?"

but to be able to enforce regulations in time of peace:

"Whiles yet my soldiers are in my command;
Whiles yet the cool and temperate wind of grace
O'erblows the filthy and contagious clouds
Of heady murder, spoil, and villany."

In the study, development, acquisition, or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, under some or all circumstances be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

II. *The traditional principles of the law of war*

Unnecessary suffering

War is an exceptional state of law in which destruction and killing are permitted, although not without restrictions (see Article 22 of the 1907 Hague Regulations).

In the seventeenth century, Hugo Grotius taught that *"in bello omnia licere quae necessaria sunt ad finem belli" (De jure belli ac pacis, Book III,1. 2).* The traditional *jus in bello* only included one aspect of this principle – that is, that an act of violence which does not further the aim of the war is not permitted. This is perhaps the only undisputed rule of warfare: that acts of violence which are not necessary to the conduct of war are prohibited. But opinions differ on which acts are necessary and which are not.

If unnecessary violence is prohibited, it follows logically that violence which causes *disproportionate* suffering to soldiers or civilians compared with the military gains is also prohibited. Here, however, opinions differ, and it is clear that any principle of proportionality contains a value judgement which makes its application in times of combat very dubious, since it depends on subjective reasoning.

The principle of the prohibition of "unnecessary suffering" or "superfluous injury" finds application in the prohibition on wounding or killing soldiers who have surrendered at discretion (Article 23*c* of the 1907 Hague Regulations) and on declaring that no quarter will be given (Article 23*d*). Another more general application is the prohibition of weapons calculated to cause unnecessary suffering (Article 23*e*). Thus, for instance, if a bullet can, by hitting and disabling a soldier, eliminate him from battle, it must not be reconstructed in such a way that it inflicts unhealable wounds, or renders death inevitable.

Respect for the civilian population

Related to the principle that violence which does not further the war aim is prohibited is the general principle of the distinction between soldiers and civilians. When wars were fought by standing armies, this distinction was understandable and obvious: civilians were not involved in armed conflicts and were expected to remain passive. In fact, civilians were not permitted to participate in warfare.[7] The assumption that violence directed against civilians could not

[7] Except in the case of the closely defined *levée en masse* (Article 2, Hague Regulations), the special case in which civilians attained the position of privileged combatants.

further the conduct of war gave rise to the general principle, ac
1868 Declaration of St Petersburg, "that the only legitimate object
should endeavour to accomplish during war is to weaken the m
of the enemy": that attacks on civilians as such are prohibited. A
principle is not expressly formulated as a rule in the formal co
finds expression in the prohibition on attacking undefended buil
or ports (Article 25 of the Hague Regulations; Article 1, Hague Co

In the traditional law of war, however, exceptions to the general
on deliberately injuring the civilian population as such were reco
cially in the rules of naval warfare. The blockade was not forbido
the naval bombardment of towns if the local authorities declin
necessary supplies to the rival forces (Article 3, Hague Convent
itary necessity (the need to secure supplies) provided, in this case,
to coerce civilians by violent means.

The prohibition on deliberately attacking the civilian populati
not based exclusively on the principle of avoiding unnecessary suf
humanitarian aspects apparently also played a role, leading to the
tion to take into account the interests of the civilian population.
of international law concerning warfare are based on the princip
vilian population should be spared as far as possible. The cleares
this principle is found in the rules concerning warning before b
(Article 26, Hague Regulations; Article 2, Hague Convention IX

The principle of proportionality

Another consequence of respect for civilians as a basic principle g
strictions in warfare is the rule that acts of force against military
be renounced if they cause disproportionate suffering to the civ
tion.

It is questionable, however, whether this principle of "proport
ever expressly recognized as a definite rule of international law.
ticle 26 of the 1906 Hague Regulations required the officer comm
tacking force to do all in his power to warn the authorities of th
attack. Article 2 of Hague Convention IX also required definite
given if this were at all possible, but for the rest it permitted "any
damage". However, the code for the law of air warfare, formul
took this principle as a point of departure. Military targets were lis
and it was laid down that these targets should only be bombed if

[8] Starving civilians in order to force them to demand their governments' capitul
a role in many wars. Article 17 of the 1863 Lieber Instructions states: "War is
arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so th
speedier subjection of the enemy."

[9] Article 24:2 of the 1923 Hague Draft Rules on Aerial Warfare included "facto
important and well-known centres engaged in the manufacture of arms, ammu
tively military supplies".

exercising pressure on the enemy, in conjunction with sea-power, blockade and the defeat of the enemy armies. Aircraft would have a necessary role in future land and sea battles, although their primary task should be the direct assault by air on the enemy nation.

Trenchard's forecast turned out to be closer to the actual events of the air warfare in World War II than those of Mitchell and Douhet, although the latter pair may turn out to be the truer prophets in the long run. Doubtless this was due to Trenchard's greater experience and his long-time responsibility for the development of the RAF—the first independent air force.

The bombing of cities during World War I, limited as it was, and the dire prophecies of others besides Douhet and Mitchell predicting that direct assaults on the civil population would be enormously increased in future wars, made many people believe that air bombing should be outlawed, or at least limited. Various attempts were made to do this. A group of international jurists met at The Hague in 1922–23 and drew up a set of rules which would have set limits to the right of air bombardment in war, generally assimilating these to the previously recognized rights of bombardment by artillery from the sea and the land. The rules allowed the bombing of armament industries, but stipulated that this should be done in such a way as to inflict minimum damage on non-combatants. In this, the distinguished jurists showed that they did not understand an essential characteristic of the aeroplane as a means of delivering an explosive charge, namely its lack of accuracy while fighting under the stresses of actual warfare. But one can scarcely blame them for this, as they doubtless had expert advice to the effect that bombs could be dropped in a relatively discriminating manner. Although a good deal of interest and discussion was aroused by the jurists' proposals, they were never incorporated in an international convention, and never became in any sense international law.

In 1925 the League of Nations set up a commission to prepare for a conference on the reduction and limitation of armaments. It held sessions from May 1926 until December 1930. The United

States participated in the proceedings from 1926, and the Soviet Union attended from 1927, although they were not members of the League. Litvinov, the Soviet representative, proposed complete and immediate disarmament in December of 1927, an antecedent to Mr. Khrushchev's proposal to the United Nations in 1959 for general and complete disarmament.

While the preparatory commission was struggling with technicalities, a bolder, simpler and more idealistic proposal was put forward by Mr. Kellogg, then United States Secretary of State. The idea was brought to final form with the collaboration of M. Aristide Briand, Prime Minister of France, and became known as the Kellogg-Briand Pact. It was a treaty under which the signatories renounced war as an instrument of national policy, or, in other words, as a means of settling international disputes. Signed in August 1928 by fifteen of the most important nations, by 1930 it had been subscribed to by all self-governing states, except three South American republics. In 1931 it was invoked in vain to stop the Japanese invasion of Manchuria; in 1935 an appeal to Italy not to invade Ethiopia similarly failed. And then came Hitler and World War II. The lamentable failure of this noble experiment does not seem to have lessened the enthusiasm of the Soviet Union, and a few other states, for giving paper promises to be forever virtuous and peaceful.

Finally the League's disarmament preparatory commission adopted a draft convention, and this was submitted to the main conference which assembled in 1932 at Geneva. The draft convention, *inter alia*, provided for military aircraft to be limited in their horsepower, and for the prohibition of chemical and bacteriological warfare. Another proposal discussed was to prohibit air bombardment of any nature. The British Government, having in mind the use of the RAF to control the unruly tribes on the North-West Frontier of India and in Iraq, suggested an amendment allowing this form of air action. The air control, of course, had been exercised in a relatively decent way: warning was given to evacuate villages which were to be bombed as a punishment for tribal forays, abductions and so forth. This, in fact, was an economical and relatively bloodless way of controlling these law-

less groups, who had immemorially been given to the practice of raiding and pillaging their neighbours. The former method was to send punitive columns of troops, who generally had to fight pretty hard to reach their objectives—the tribal villages—in the face of great difficulties of terrain and transport.

The British Labour Party, then in opposition, accused the Conservative Government of having blocked agreement to prohibit air bombardment, which it seemed would have been greatly in the interest of Britain, for the comparatively minor advantage of using the RAF to control marginal frontier areas. The Conservatives, of course, denied that this was a substantial cause of the disarmament conference's breakdown.

There were other proposals for legitimatizing air bombing of military targets in support of air or sea operations. But it became clear that it would be very hard to define what was a legitimate military objective. In 1933 a new draft based on British suggestions was unanimously accepted by the disarmament conference as a basis for the future convention. It called for a limitation of the numbers of naval and military aircraft, and for their eventual abolition.

The conference droned along, but the world political situation was worsening. In September 1931, the Japanese had begun a military offensive in Manchuria, which led to the invasion of China. As the League of Nations disapproved of these actions, Japan withdrew from it in 1933.

Germany had been demanding that the other powers should disarm down to her level as stipulated in the Treaty of Versailles, or that she should be allowed to rearm. In October 1933, she withdrew from the disarmament conference, and from the League. Italy threatened to do the same. In the face of the undisguised warlike intentions of the partners of the eventual Fascist alliance, disarmament was manifestly impossible, and on 16 June 1934 the conference was suspended. However, subcommittees to study various aspects of the disarmament problem were set up, and the bureau of the conference continued to exist until May of 1937. Italy had invaded Ethiopia in 1935 and carried on its colonial war there in spite of half-hearted economic sanctions voted by

the League. Japan invaded China in July 1937. In the course of their war against China, they bombed Canton in 1938 and Chungking in 1939, causing numerous civilian casualties in each case. The Kuomintang Government protested violently. Madame Chiang Kai-shek's account of the bombing of Chungking rivalled the realities of the Hamburg holocaust. It was claimed that 1500 were killed, and about the same number seriously injured. The world was mildly upset. In July 1936 the civil war in Spain broke out, during which Hitler's Luftwaffe and their Italian colleagues shocked the world by bombing civilians in towns, notably Guernica.

It is instructive to note that all of these countries that initiated the bombing of civilian targets in the 1930's suffered incomparably greater damage when this sort of warfare was waged against them in the 1940's. Could the same kind of thing happen to the initiators of atomic bombing of cities?

The failure of the League of Nations Disarmament Conference, which broke up without achieving any result whatever in June 1934, is frequently recalled with satisfaction by those who are against all disarmament in the 1960's. Presumably they must also be happy about what followed.